IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/12/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.13962 OF 1999 and W.P.NO. 23616 OF 2001

R. Usharani .. Petitioner in both WPs

-Vs-

1. The District Collector,
Tiruvarur.

2. The District Adi Dravidar
Welfare Officer,
Tiruvarur,
Tiruvarur District. .. Respondents in WP.13962/99

3. The Bank of Baroda,
rep. by its Assistant
General Manager,
Regional Office,
No.82, Bank Road, Third Floor,
Coimbatore 641 018. .. Respondent No.3 in WP.13962 of 1999
and Respondent in
WP.23616 of 2001

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : M/s.M. Suresh Kumar &
in both WPs W.M. Abdul Majeed

^For Respondent-3
in WP.13962 &
Respondent in : Mr.K.S.V. Prasad
WP.No.23616/01

:J U D G M E N T

The petitioner has prayed for a direction to the respondents forbearing them from conducting a fresh enquiry relating to the community status of the petitioner in W.P.No.13962 of 1999. In W.P.No.23616 of 2001, the petitioner has prayed for a direction to the respondent to give promotion

to the petitioner and extend all other benefits by treating her as belonging to Scheduled Tribe community.

2. It is claimed by the petitioner that she belonged to Kattunayakan community which comes under the Constitution (Scheduled Tribes) Order, 1950. On that basis the petitioner was appointed as clerk-cumtypist under the respondent bank. At that time, she had produced the community certificate dated 7.8.1977 issued by the Tahsildar. The petitioner claims that she was again called upon to produce another community certificate and accordingly she obtained another community certificate dated 17.6.1989 from the Tahsildar, Kodavasal, which was produced before the respondent bank. The petitioner claims that due to frivolous complaints sent through various persons and organisations having no connection in the matter, an enquiry was commenced in the year 1998. However, it is submitted that after enquiry at the level of the Tahsildar and the level of the Revenue Divisional Officer, a favourable report dated 3.5.1999 has been submitted to the bank and yet the enquiry has been re-opened. The petitioner claims that such a belated enquiry is not contemplated, particularly at the instance of the persons who have no locus standi and in view of the favourable report, there is no necessity to hold any further enquiry. The petitioner also claims that merely because there has been subsequent suspicion regarding the community certificate, which had been issued in favour of the petitioner long back, the respondent bank has withheld the service benefits such as promotion, confirmation, etc..

3. Initially, W.P.No.23616 of 2001 has been disposed of ex-parte in the absence of third respondent bank, but subsequently, such order has been recalled. The third respondent respondent bank has filed a counter and the matter has been heard afresh.

4. In the counter affidavit filed on behalf of the bank it has been pointed out that earlier the petitioner was called upon to produce the community certificate which she had produced at the time of employment for the purpose of verification. However, the petitioner instead of producing such a certificate, obtained a fresh certificate from a different Tahsildar and produced the same. It is contended that there is no embargo for holding any enquiry relating to the community status of the petitioner.

5. Learned counsel appearing for the petitioner has contended that in view of the favourable report submitted by the Revenue authorities, which has been brought to the notice of the bank, there is no necessity to hold any further enquiry, as such enquiry at the behest of the persons having no locus standi has the tendency to cause unnecessary hardship and harassment to the petitioner. It has been further submitted that because of the pendency of so called enquiry, the petitioner□s case for promotion and other benefits are not being considered even though she is otherwise eligible.

6. The procedure relating to verification of the community certificate and cancellation of the same has been dealt with by the Supreme Court in A.I.R. 1995 SC 94 (MADHURI PATIL v. ADDITIONAL COMMISSIONER FOR TRIBAL DEVELOPMENT). In a subsequent decision of the Supreme Court reported in 1997(7) SCC 505 (R. KANDASAMY v. THE CHIEF ENGINEER, MADRAS PORT TRUST),

it has been observed that so long as the community certificate is not cancelled in the manner known to law, such a community certificate issued by the appropriate authorities had to be given effect to. However, it has been observed that there is no bar for verification of the community certificate.

7. Most of the relevant decisions on the point have been noticed by Justice K. Sampath in W.P.No.42620 of 2002 disposed of on 13.3.2003. In the said decision, it has been observed that while there is no bar to proceed with any enquiry regarding validity of the community certificate, mere pendency of such an enquiry is not a ground to deprive the employee of the benefits. In other words, so long as the community certificate is not cancelled in accordance with law, an employee has the right to get necessary benefits on the basis of such community certificate which may be however subject to the ultimate result in the enquiry.

8. In the light of the aforesaid decision, the grievance of the petitioner is to be examined. The prime contention of the petitioner is to the effect that because of the pendency of the so called enquiry, the petitioner□s name is not being considered for promotion. In view of the decision of the Supreme Court in 1997(7) SCC 505 (cited supra) and the subsequent unreported decision, there cannot be any doubt that until the community certificate is cancelled in accordance with law, if an employee is entitled to any benefit on the basis of such community certificate, he cannot be deprived of such benefit merely on the pretext that some enquiry is pending. In other words, if the present petitioner is otherwise eligible and entitled to any promotion, she should not be deprived of the same merely because of some enquiry is pending.

9. The other contention of the learned counsel for the petitioner to the effect that a direction should be issued forbearing the respondents from continuing with the enquiry cannot be accepted in the form in which it has been made. It is of course true that the petitioner had produced certificates from time to time and there has been some correspondence. However, the validity of the community certificate has not been formally decided in any proceedings.

10. Having regard to the facts and circumstances of the case, it would not be appropriate to issue a positive direction forbearing the respondents from continuing with the enquiry. On the other hand, keeping in view the decisions of the Supreme Court, it would be more appropriate to give a direction that the question of validity of the community certificate should be considered by the appropriate Three Members Committee constituted in accordance with the decision of the Supreme Court in A.I.R. 1995 SC 94 (cited supra). It goes without saying that such appropriate Three Members Committee, as contemplated under the Supreme Court decision, should deal with the matter in accordance with law by giving adequate opportunity of hearing to the petitioner and such proceeding should be disposed of as expeditiously as possible, preferably within a period of six months from the date of receipt of

the relevant records. The respondents 1 & 2 are directed to place all the relevant papers before the appropriate Three Members Scrutiny Committee for the aforesaid purpose.

11. Subject to the aforesaid observations and directions, the writ petitions are disposed of. No costs.

dpk

To

1. The District Collector,
Tiruvarur.

2. The District Adi Dravidar
Welfare Officer,
Tiruvarur,
Tiruvarur District.

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